

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Todd Damase Ouellette,

Complainant,

vs.

Bruce Reed,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

**TO: Todd Damase Ouellette, 2624 Tuxedo Lane North, Rochester, MN 55901; and
Bruce Reed, 1070 Gilmore Avenue, Winona, MN 55987.**

On December 13, 2006, Todd Ouellette filed a Complaint with the Office of Administrative Hearings alleging that Bruce Reed violated Minn. Stat. §§ 211B.05 (paid advertisements in news), 211B.06 (false campaign material) and 211B.07 (undue influence on voters). After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.06.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved

by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: December 14, 2006

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

The Complainant ran unsuccessfully as a candidate for the Winona City Council in 2006. He was challenging incumbent councilman, Gerry Krage, who was serving in Iraq during the campaign. Bruce Reed managed Krage's campaign in his absence.¹ The Complaint alleges that Mr. Reed violated Minn. Stat. §§ 211B.05, 211B.06, and 211B.07 by placing a campaign advertisement in the October 4, 2006, edition of the *Winona Post* that allegedly contained false campaign material and lacked the phrase "PAID ADVERTISEMENT" at the beginning or end of the advertisement.

The advertisement stated in part as follows:

Residents of the second ward need to be aware of the pack of rats that were running through Winona about two months ago. These were no ordinary rats; these rats had two legs. This pack of rats came to Winona by bikes, cars, trains, walking, and who knows how else a pack of rats are transported from one community to another.

Law enforcement agencies from across Minnesota including the FBI were in Winona for approximately one week to help observe and control the rat pack. The average age of the rat pack was about 23 years old in human years.

¹ Complaint Ex. 1 (advertisement in October 4, 2006, edition of the *Winona Post*).

This rat pack that I speak of was a well-organized group of anti-government, anti-religion, anti-school, anti-military, and anti just about everything else you can imagine. . . .

One of the local organizers of this rat pack is a person that is running for the position of city council representative for the 2nd ward. This person wrongfully and illegally set up false residency here in the 2nd ward. He had to be removed by the elder homeowner's family who hired an attorney from La Crosse. This person now resides in his car, has had a DUI, and has recently been charged with minor assault. I have also heard but not yet confirmed that this candidate for city council has had several restraining orders placed on him by Winona residents. Todd Ouellette is the person's name that I am making the residents of the 2nd ward aware of. Yes, Todd Ouellette, remember that name. We do not need a person with his radical beliefs and ideas as our city council representative. . . .

Minn. Stat. § 211B.05

The Complaint alleges that the Respondent violated Minn. Stat. § 211B.05, by having the advertisement placed in the *Winona Post* without clearly identifying it as a paid advertisement.

Minn. Stat. § 211B.05, subd. 1, provides as follows:

Subdivision 1. Acceptance of paid advertisements. A newspaper, periodical, or magazine may not intentionally accept for insertion in the newspaper, magazine, or periodical a political advertisement unless the words "PAID ADVERTISEMENT," and the disclaimer required under section 211B.04 are included at the beginning or end of the advertisement. The disclaimer must be in a legible text size and font. A radio station, television station, or cable system may not accept for broadcast a political advertisement unless the words "PAID ADVERTISEMENT" are included at the beginning or end of the advertisement.

The Administrative Law Judge concludes that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.05. This statute is directed at news organizations and it places certain duties on them, such as requiring them to include the words "PAID ADVERTISEMENT" at the beginning or end of an advertisement. Because Respondent is not a news organization and is not regulated by Minnesota Statute § 211B.05, this allegation is dismissed.

Minn. Stat. § 211B.06

The Complainant alleges that the following statements in the advertisement are false: (1) that the Complainant was a "local organizer" of the "anti-government, anti-religion, anti-school, anti-military" group; (2) that the Complainant "wrongfully and

illegally set up false residency in the 2nd ward;" (3) that the Complainant "had to be removed by an elder homeowner's family;" (4) that the Complainant has had a DUI; and (5) that the Complainant has had "several restraining orders placed on him by Winona residents."

Minn. Stat. § 211B.06 prohibits a person from intentionally preparing or disseminating false campaign material with respect to the personal or political character or acts of a candidate that is designed or tends to injure or defeat a candidate, and which the person knows is false or communicates to others with reckless disregard of whether it is false. In *Kennedy v. Voss*,² the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not against unfavorable deductions, or inferences based on fact - even if the inferences are "extreme and illogical."³ The Court pointed out that the public is protected from such extreme and illogical inferences by the ability of other speakers to rebut these claims during the campaign process.⁴ In addition, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.⁵

The burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.⁶ A statement is substantially accurate if its "gist" or "sting" is true, that is, if it produces the same effect on the mind of the recipient which the precise truth would have produced. Where there is no dispute as to the underlying facts, the question whether a statement is substantially accurate is one of law.⁷

The Complaint alleges that Mr. Reed has falsely claimed that Ouellette was a local organizer of an anti-government, anti-religion group; that he illegally set up false residency in Winona; that he had to be removed from an elderly person's home; and that he has a DUI and possibly has had several restraining orders filed against him. If the evidence at a hearing were to establish that these statements are false, and that Mr. Reed communicated these statements with either knowledge of, or a reckless disregard of, their falsity, those facts would establish a violation of Minnesota Statutes § 211B.06. The Administrative Law Judge finds that the Complainant has alleged prima facie violations of Minn. Stat. § 211B.06 with respect to the five identified statements.

² 304 N.W.2d 299 (Minn. 1981).

³ *Id.* at 300.

⁴ *Id.*

⁵ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

⁶ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d at 441.

⁷ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d at 441.

Minn. Stat. § 211B.07

The Complainant also alleges that by disseminating the campaign advertisement, the Respondent violated Minnesota Statutes § 211B.07. Minn. Stat. § 211B.07 prohibits undue influence on voters and provides as follows:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

In order to allege a prima facie violation of Minn. Stat. § 211B.07, the Complainant must put forward facts that would support finding the Respondent used or threatened force, coercion, violence, harm etc. to “compel” a person to vote for or against a candidate. The Complaint does not identify any specific language that is alleged to violate Section 211B.07, and the Administrative Law Judge is not able to identify in the advertisement any direct or implied threat of harm that would compel anyone to vote for or against the Complainant. The Complainant states only that the advertisement was an effort to “intimidate” his supporters. Absent some allegation that the Respondent used or threatened force, coercion, violence, damage, or harm to compel persons not to vote for the Complainant, however, the claim fails. Because the Complainant has failed to allege sufficient facts to support his claim of undue influence, the allegation that Respondent violated Minn. Stat. § 211B.07 is dismissed.

This matter will be referred to the Chief Administrative Law Judge for assignment of a three-judge panel to consider the remaining allegation that the Respondent violated Minn. Stat. § 211B.06.

K.D.S.